



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

August 1, 1996

Mr. Alberto J. Peña
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR96-1364

Dear Mr. Peña:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100285.

The City of San Antonio (the "city") received a request for the following categories of documents:

1. A copy of the transcripts of the radio communication between the officer involved in the accident (Officer Villanueva) and the dispatcher or any other police officer who talked with Villanueva over the radio just prior to the accident in question.
2. A copy of the official police report of the accident in question.
3. Pictures of the accident scene as taken by the police photographers.
4. Any statements made by eyewitnesses to the San Antonio Police Department.
5. Identify all San Antonio Police Officers who witnessed the accident.

6. Please give a detailed history of any accidents which Officer Villanueva was involved in, stating the nature of the accident and any administrative actions taken by the San Antonio Police Department in conjunction with that accident (i.e. suspension, reprimand, etc.).

You state that the city has provided the requestor with documents responsive to request numbers 1 and 2, as well as disciplinary actions taken against the officer in response to request number 6, but not with the "detailed history" the requestor seeks. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ You have submitted samples of the responsive documents to this office for review.² We have considered the exceptions you claimed and have reviewed the sample documents.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

In Open Records Decision No. 638 (1996), this office held that a governmental body could establish that litigation is reasonably anticipated for purposes of chapter 552 of the Government Code if it received a notice of claim which it represented to this office complies with the applicable statute or municipal ordinance. Here, the city has met this test. Therefore, we conclude that litigation is reasonably anticipated. After reviewing the sample documents, we conclude that they are related to the anticipated litigation. Consequently, the city may withhold the requested information under section 552.103 of the Government Code.

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends

¹We note that the city subsequently withdrew its request for a ruling on the information it believes is excepted from disclosure under section 552.101.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 100285

Enclosures: Submitted documents

cc: Mr. Richard F. Garza
Law Offices of Ashley & Garza
1700 Commerce, Suite 1750
Dallas, Texas 75201-5320
(w/o enclosures)